

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

USA

NO. 5:05-cr-00215 EJD

Plaintiff(s),

JURY INSTRUCTIONS - READ

v.

ERIC AARON LIGHTER

Defendant(s).

/

COURT'S INSTRUCTION NO. ____

DUTY OF JURY

Jurors: You now are the jury in this case, and I want to take a few minutes to tell you something about your duties as jurors and to give you some preliminary instructions. At the end of the trial I will give you more detailed [written] instructions that will control your deliberations. When you deliberate, it will be your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. To the facts as you find them, you will apply the law as I give it to you, whether you agree with the law or not. You must decide the case solely on the evidence and the law before you and must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. Please do not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be—that is entirely up to you.

COURT'S INSTRUCTION NO. ____

THE CHARGE--PRESUMPTION OF INNOCENCE

This is a criminal case brought by the United States government. The indictment charges Defendant Eric Aaron Lighter with conspiracy, wire fraud, witness tampering and blackmail. The charges against the defendant are contained in the indictment. The indictment simply describes the charges the government brings against the defendant. The indictment is not evidence and does not prove anything.

The defendant has pleaded not guilty to the charges and are presumed innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant has the right to remain silent and never have to prove innocence or to present any evidence.

In order to help you follow the evidence, I will now give you a brief summary of the elements of the crimes which the government must prove to make its case. In Count 1, defendant Eric Aaron Lighter is charged with conspiring to defraud the United States by impeding, impairing, obstructing and defeating the lawful government functions of the Internal Revenue Service (IRS) in the ascertainment, computation, assessment, and collection of federal income taxes, in violation of 18 U.S.C. § 371. This charge encompasses a scheme to conceal the assets and income of the defendant's clients and clients of National Trust Services from the IRS, to file false tax returns and to illegally eliminate tax liabilities.

Count 24 charges defendant Eric Aaron Lighter with conspiring to commit wire fraud, in violation of 18 U.S.C. § 371. In Counts 25 through 32, defendant Eric Aaron Lighter is charged with wire fraud, in violation of 18 U.S.C. §§ 1343 and 2.

Count 33 charges defendant Eric Aaron Lighter with conspiracy to commit witness tampering and blackmail, in violation of 18 U.S.C. § 371. Counts 34 through 36 charge defendant Eric Aaron Lighter with witness tampering, in violation of 18 U.S.C. §§ 1512(b)(1) and 2. Counts 37 through 39 charge defendant Eric Aaron Lighter with blackmail, in violation

of 18 U.S.C. §§ 873 and 2.

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COURT'S INSTRUCTION NO. ____

WHAT IS EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which are received in evidence; and
- (3) any facts to which the parties agree.

COURT'S INSTRUCTION NO. ____

WHAT IS NOT EVIDENCE

The following things are not evidence, and you must not consider them as evidence in deciding the facts of this case:

- (1) statements and arguments of the attorneys;
- (2) questions and objections of the attorneys;
- (3) testimony that I instruct you to disregard; and
- (4) anything you may see or hear when the court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

COURT'S INSTRUCTION NO. ____

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

COURT'S INSTRUCTION NO. ____

RULING ON OBJECTIONS

There are rules of evidence that control what can be received in evidence. When a lawyer asks a question or offers an exhibit in evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, or the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer would have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence that I told you to disregard.

COURT'S INSTRUCTION NO. ____

CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the witness's opportunity and ability to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence; and
- (8) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

COURT'S INSTRUCTION NO. ____

CONDUCT OF THE JURY

I will now say a few words about your conduct as jurors.

First, keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case.

Second, because you must decide this case based only on the evidence received in the case and on my instructions as to the law that applies, you must not be exposed to any other information about the case or to the issues it involves during the course of your jury duty. Thus, until the end of the case or unless I tell you otherwise:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any Internet chat room, blog, website or other feature. This applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone else including your family members, your employer, the media or press, and the people involved in the trial, although you may notify your family and your employer that you have been seated as a juror in the case. But, if you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Because you will receive all the evidence and legal instruction you properly may consider to return a verdict: do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting

1 dictionaries, searching the Internet or using other reference materials; and do not make any
2 investigation or in any other way try to learn about the case on your own.

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4 The law requires these restrictions to ensure the parties have a fair trial based on the same
5 evidence that each party has had an opportunity to address. A juror who violates these
6 restrictions jeopardizes the fairness of these proceedings[, and a mistrial could result that would
7 require the entire trial process to start over]. If any juror is exposed to any outside information,
8 please notify the court immediately.

COURT'S INSTRUCTION NO. ____

NO TRANSCRIPT AVAILABLE TO THE JURY

At the end of the trial you will have to make your decision based on what you recall of the evidence. You will not have a written transcript of the trial. I urge you to pay close attention to the testimony as it is given.

COURT'S INSTRUCTION NO. ____

TAKING NOTES

If you wish, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note taking distract you so that you do not hear other answers by witnesses. When you leave, your notes should be left in the [court room] [jury room] [envelope in the jury room]. No one will read your notes.

Whether or not you take notes, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

COURT'S INSTRUCTION NO. ____

OUTLINE OF TRIAL

The next phase of the trial will now begin. First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

The government will then present evidence and counsel for the defendant may cross-examine. Then, if the defendant chooses to offer evidence, counsel for the government may cross-examine.

After the evidence has been presented, [I will instruct you on the law that applies to the case and the attorneys will make closing arguments] [the attorneys will make closing arguments and I will instruct you on the law that applies to the case].

After that, you will go to the jury room to deliberate on your verdict.

COURT'S INSTRUCTION NO. ____

CAUTIONARY INSTRUCTION – FIRST RECESS

We are about to take our first break. Remember, until the trial is over, do not discuss this case with anyone, including your fellow jurors, members of your family, people involved in the trial, or anyone else, and do not allow others to discuss the case with you. This includes discussing the case in Internet chat rooms or through Internet blogs, Internet bulletin boards, emails or text messaging. If anyone tries to communicate with you about the case, please let me know about it immediately. Do not read, watch, or listen to any news reports or other accounts about the trial or anyone associated with it, including any online information. Do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials, and do not make any investigation about the case on your own. Finally, keep an open mind until all the evidence has been presented and you have heard the arguments of counsel, my instructions on the law, and the views of your fellow jurors.

If you need to speak with me about anything, simply give a signed note to the [marshal] [bailiff] [clerk] to give to me.

COURT'S INSTRUCTION NO. ____

BENCH CONFERENCES AND RECESSES

From time to time during the trial, it may become necessary for me to take up legal matters with the attorneys privately, either by having a conference at the bench or, when necessary, by calling a recess.

We will do what we can to keep the number and length of these conferences to a minimum. I may not always grant an attorney's request for a conference.

COURT'S INSTRUCTION NO. ____

DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law and must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. You will recall that you took an oath promising to do so at the beginning of the case.

You must follow all these instructions and not single out some and ignore others; they are all important. Please do not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

COURT'S INSTRUCTION NO. ____

CHARGES AGAINST DEFENDANT NOT EVIDENCE –

PRESUMPTION OF INNOCENCE – BURDEN OF PROOF

The indictment is not evidence. The defendant has pleaded not guilty to the charges. The defendant is presumed to be innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charges beyond a reasonable doubt.

COURT'S INSTRUCTION NO. ____

DEFENDANT'S DECISION TO TESTIFY

Defendant Eric Aaron Lighter has testified. You should treat this testimony just as you would the testimony of any other witness.

COURT'S INSTRUCTION NO. ____

REASONABLE DOUBT – DEFINED

Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

COURT'S INSTRUCTION NO. ____

WHAT IS EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits received in evidence; and
- (3) any facts to which the parties have agreed.

COURT'S INSTRUCTION NO. ____

WHAT IS NOT EVIDENCE

In reaching your verdict you may consider only the testimony and exhibits received in evidence. The following things are not evidence and you may not consider them in deciding what the facts are:

1. Questions, statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers have said in their opening statements, will say in their closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.

2. Any testimony that I have excluded, stricken, or instructed you to disregard is not evidence. [In addition, some evidence was received only for a limited purpose; when I have instructed you to consider certain evidence in a limited way, you must do so.]

3. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

COURT'S INSTRUCTION NO. ____

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another fact.

By way of example, if you wake up in the morning and see that the sidewalk is wet, you may find from that fact that it rained during the night. However, other evidence, such as a turned-on garden hose, may provide an explanation for the water on the sidewalk. Therefore, before you decide that a fact has been proved by circumstantial evidence, you must consider all the evidence in the light of reason, experience, and common sense.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

COURT'S INSTRUCTION NO. ____

STIPULATIONS OF FACT

(if applicable)

The parties have agreed to certain facts that have been stated to you. You should therefore treat these facts as having been proved.

COURT'S INSTRUCTION NO. ____

JUDICIAL NOTICE

The court has decided it is not necessary to receive evidence of the fact that the cities of Berkeley, San Jose and San Francisco each lie within the Northern Judicial District of California, because this fact is of such common knowledge. You may, but are not required to, accept this fact as true.

COURT'S INSTRUCTION NO. ____

TRANSCRIPT OF RECORDING

You have heard a recording that has been received in evidence. A transcript of the recording was provided to help you identify speakers and to help you decide what the speakers say. Remember that the recording is the evidence, not the transcript. If you heard something different from what appears in the transcript, what you heard is controlling. Listen carefully; the transcript will not be available during your deliberations.

COURT'S INSTRUCTION NO. ____

CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the witness's opportunity and ability to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence; and
- (8) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

COURT'S INSTRUCTION NO. ____

EVIDENCE OF OTHER ACTS OF DEFENDANT

OR ACTS AND STATEMENTS OF OTHERS

You are here only to determine whether the defendant is guilty or not guilty of the charges in the indictment. The defendant is not on trial for any conduct or offense not charged in the indictment.

COURT'S INSTRUCTION NO. ____

SEPARATE CONSIDERATION OF MULTIPLE COUNTS

A separate crime is charged against the defendant in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

COURT'S INSTRUCTION NO. ____

STATEMENTS BY DEFENDANT

You have heard testimony that the defendant Eric Aaron Lighter made a statement. It is for you to decide (1) whether the defendant Eric Aaron Lighter made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all the evidence about the statement, including the circumstances under which the defendant Eric Aaron Lighter may have made it.

COURT'S INSTRUCTION NO. ____

TESTIMONY OF WITNESS INVOLVING SPECIAL CIRCUMSTANCES

– PLEA AGREEMENT

You have heard testimony from Samuel Fung, a witness who pleaded guilty to a crime arising out of the same events for which the defendant is on trial. This guilty plea is not evidence against the defendant, and you may consider it only in determining this witness's believability.

For this reason, in evaluating the testimony of Samuel Fung, you should consider the extent to which or whether his testimony may have been influenced by this factor. In addition, you should examine the testimony of Samuel Fung with greater caution than that of other witnesses.

COURT'S INSTRUCTION NO. ____

TESTIMONY OF WITNESS INVOLVING SPECIAL CIRCUMSTANCES – IMMUNITY

You have heard testimony from Jean-Paul Bourdier, a witness who received immunity. That testimony was given in exchange for a promise by the government that the testimony will not be used in any criminal case against the witness;

For this reason, in evaluating the testimony of Mr. Bourdier, you should consider the extent to which or whether his testimony may have been influenced by this factor. In addition, you should examine the testimony of Mr. Bourdier with greater caution than that of other witnesses.

COURT'S INSTRUCTION NO. ____

CREDIBILITY OF WITNESSES – INCONSISTENT STATEMENTS

The testimony of a witness may be discredited or, as we sometimes say, impeached by showing that he or she previously made statements which are different than or inconsistent with his or her testimony here in court. The earlier inconsistent or contradictory statements are admissible only to discredit or impeach the credibility of the witness and not to establish the truth of these earlier statements made somewhere other than here during this trial. It is the province of the jury to determine the credibility of a witness who has made prior inconsistent or contradictory statements.

If a person is shown to have knowingly testified falsely concerning any important or material matter, you obviously have a right to distrust the testimony of such an individual concerning other matters. You may reject all of the testimony of that witness or give it such weight or credibility as you may think it deserves.

COURT'S INSTRUCTION NO. ____

OPINION EVIDENCE, EXPERT WITNESS

You have heard testimony from persons who, because of education or experience, were permitted to state opinions and the reasons for their opinions.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

COURT'S INSTRUCTION NO. ____

SUMMARIES NOT RECEIVED IN EVIDENCE

During the trial, certain charts and summaries were shown to you in order to help explain the evidence in the case. These charts and summaries were not admitted in evidence and will not go into the jury room with you. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

COURT'S INSTRUCTION NO. ____

CHARTS AND SUMMARIES IN EVIDENCE

Certain charts and summaries have been received into evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

COURT'S INSTRUCTION NO. ____

CONSIDERATION OF EVIDENCE – CONDUCT OF THE JURY

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during your deliberations:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any Internet chat room, blog, website or other feature. This applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A juror who violates these restrictions jeopardizes the fairness of these proceedings[, and a mistrial could result that would require the entire trial process to start over]. If any juror is exposed to any outside information, please notify the court immediately.

COURT'S INSTRUCTION NO. ____

USE OF NOTES

Some of you have taken notes during trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

COURT'S INSTRUCTION NO. ____

JURY CONSIDERATION OF PUNISHMENT

The punishment provided by law for this entire crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

COURT'S INSTRUCTION NO. ____

PERSONS NOT ON TRIAL

You are not here to decide whether the government has proved beyond a reasonable doubt that the persons other than the defendant is guilty of the crimes charged. You may not draw any inference, favorable or unfavorable, to the government or to the defendant from the fact that other persons are not named as defendants. You also may not speculate as to the reasons that other persons are not on trial. These matters are wholly outside your concern and have no bearing on your function as jurors deciding the case before you.

COURT'S INSTRUCTION NO. ____

STATUTORY LANGUAGE OF 18 U.S.C. § 371

§ 371. Conspiracy to Defraud the United States

Title 18, United States Code Section 371 provides, in part, that:

If two or more persons conspire . . . to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be [guilty of an offense against the United States].

COURT'S INSTRUCTION NO. ____

CONSPIRACY - NATURE OF THE CHARGE

This is a criminal case brought by the United States government. In Count 1 of the indictment, the defendant is charged with conspiring to defraud the United States by deceitful and dishonest means by impeding, impairing, obstructing, and defeating the lawful government functions of the Internal Revenue Service of the Department of the Treasury of the United States of America, in the ascertainment, computation, assessment, and collection of federal income taxes, in violation of 18 U.S.C. § 371. This charge encompasses a scheme to conceal the assets and income of the defendant's and others' clients from the IRS, and to illegally eliminate tax liabilities.

COURT'S INSTRUCTION NO. ____

IRS IS AN AGENCY OF THE UNITED STATES

For purposes of the defraud clause of 18 U.S.C. § 371, the IRS is an agency of the United States.

COURT'S INSTRUCTION NO. ____

STATUTORY LANGUAGE OF 18 U.S.C. § 371

§ 371. Conspiracy to Commit a Substantive Offense

Title 18, United States Code Section 371 provides, in part, that:

If two or more persons conspire . . . to commit any offense against the
United States . . . and one or more of such persons do any act to effect the
object of the conspiracy, each shall be [guilty of an offense against the
United States].

COURT'S INSTRUCTION NO. ____

CONSPIRACY – DISCUSSION REGARDING ELEMENTS

A conspiracy is a kind of criminal partnership—an agreement of two or more persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful; it does not matter whether the crime agreed upon was committed.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. You must find that there was a plan to commit at least one of the crimes alleged in the indictment as an object of the conspiracy with all of you agreeing as to the particular crime which the conspirators agreed to commit.

One becomes a member of a conspiracy by willfully participating in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy, even though the person does not have full knowledge of all the details of the conspiracy. Furthermore, one who willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand, one who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person does not become a conspirator merely by associating with one or more persons who are conspirators, nor merely by knowing that a conspiracy exists.

An overt act does not itself have to be unlawful. A lawful act may be an element of a

1 conspiracy if it was done for the purpose of carrying out the conspiracy. The government is not
2 required to prove that the defendant personally did one of the overt acts.

COURT'S INSTRUCTION NO. ____

CONSPIRACY TO DEFRAUD – ELEMENTS

The defendant is charged in Count One of the indictment with conspiring to defraud the United States by obstructing the lawful functions of the Internal Revenue Service of the Department of the Treasury of the United States of America by deceitful or dishonest means in violation of Section 371 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, beginning on or about August 2, 1997, and ending on or about March 31, 2006, there was an agreement between two or more persons to defraud the United States by obstructing the lawful functions of the Internal Revenue Service of the Department of Treasury of the United States of America by deceitful or dishonest means as charged in the indictment;

Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it; and

Third, one of the members of the conspiracy performed at least one overt act on or after April 12, 2002 for the purpose of carrying out the conspiracy, with all of you agreeing on a particular overt act that you find was committed.

An agreement to defraud is an agreement to deceive or to cheat.

COURT'S INSTRUCTION NO. ____

CONSPIRACY TO COMMIT WIRE FRAUD – ELEMENTS

The defendant is charged in Count Twenty-Four of the indictment with conspiring to commit wire fraud in violation of Section 371 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, beginning on or about March 25, 2003, and ending on or about March 10, 2006, there was an agreement between two or more persons to commit at least one crime as charged in the indictment;

Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it; and

Third, one of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy, with all of you agreeing on a particular overt act that you find was committed.

COURT'S INSTRUCTION NO. ____

CONSPIRACY TO COMMIT WITNESS TAMPERING AND BLACKMAIL – ELEMENTS

The defendant is charged in Count Thirty-Three of the indictment with conspiring to commit witness tampering and blackmail in violation of Section 371 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, beginning on or about March 2, 2006, and ending on or about April 30, 2006, there was an agreement between two or more persons to commit at least one crime as charged in the indictment;

Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it; and

Three, one of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy, with all of you agreeing on a particular overt act that you find was committed.

COURT'S INSTRUCTION NO. ____

CONSPIRACY - PROOF OF TIME PERIOD OF CONSPIRACY

Although Count One of the Indictment charges that the conspiracy started in or about August 2, 1997 and ended in or about March 31, 2006, it is not essential that the government prove that the conspiracy started or ended on or about those specific dates. It is sufficient if you find that in fact: (1) the charged conspiracy was formed and existed for some time within the period set forth in the Indictment; and (2) at least one overt act was committed by one of the coconspirators on or after April 12, 2002. Nor is the government required to prove all of the details of the conspiracy alleged in the Indictment.

COURT'S INSTRUCTION NO. ____

CONSPIRACY – LIABILITY FOR SUBSTANTIVE OFFENSE

COMMITTED BY CO-CONSPIRATOR (*PINKERTON* CHARGE)

Each member of the conspiracy is responsible for the actions of the other conspirators performed during the course and in furtherance of the conspiracy. If one member of a conspiracy commits a crime in furtherance of a conspiracy, the other members have also, under the law, committed that crime.

Therefore, you may find the defendant guilty of wire fraud as charged in Counts Twenty-Five through Thirty-Two of the indictment, witness tampering as charged in Counts Thirty-Four through Thirty-Six of the indictment, and blackmail as charged in Counts Thirty-Seven through Thirty-Nine of the indictment, if the government has proved each of the following elements beyond a reasonable doubt:

First, a person named in Counts Twenty-Five through Thirty-Two, Counts Thirty-Four through Thirty-Nine of the indictment committed the crime as alleged in that count;

Second, the person was a member of the conspiracy charged in Count Twenty-Four of the indictment for purposes of the wire fraud counts, and a member of the conspiracy charged in Count Thirty-Three for purposes of the witness tampering and blackmail counts;

Third, the person committed the crime in furtherance of the conspiracy to commit that offense;

Fourth, the defendant was a member of the conspiracy to commit the offense at the time the offense charged was committed; and

1 Fifth, the offense fell within the scope of the unlawful agreement and could reasonably
2 have been foreseen to be a necessary or natural consequence of the unlawful agreement.

COURT'S INSTRUCTION NO. ____

CONSPIRACY – SLIGHT CONNECTION

If the evidence establishes that a conspiracy existed, you may find that a defendant knowingly participated in the conspiracy if you find beyond a reasonable doubt that the defendant had even a slight connection to the conspiracy. A defendant may be connected to the conspiracy even if he did not know all the conspirators, did not know all the details of the conspiracy, did not participate in the conspiracy from the outset, and did not participate in all the enterprises of the conspiracy. However, mere association with members of the conspiracy or knowledge of the conspiracy is not sufficient. A connection to the conspiracy may be inferred from circumstantial evidence.

COURT'S INSTRUCTION NO. ____

MULTIPLE CONSPIRACIES

You must decide whether the conspiracies charged in the indictment existed, and, if they did, who at least some of its members were. If you find that the conspiracies charged did not exist, then you must return a not guilty verdict, even though you may find that some other conspiracy existed. Similarly, if you find that any defendant was not a member of the charged conspiracy, then you must find that defendant not guilty, even though that defendant may have been a member of some other conspiracy.

COURT'S INSTRUCTION NO. ____

CONSPIRACY—KNOWLEDGE OF AND ASSOCIATION WITH OTHER CONSPIRATORS

A conspiracy may continue for a long period of time and may include the performance of many transactions. It is not necessary that all members of the conspiracy join it at the same time, and one may become a member of a conspiracy without full knowledge of all the details of the unlawful scheme or the names, identities, or locations of all of the other members.

Even though a defendant did not directly conspire with other conspirators in the overall scheme, the defendant has, in effect, agreed to participate in the conspiracy if the government proves each of the following beyond a reasonable doubt that:

(1) the defendant directly conspired with one or more conspirators to carry out at least one of the objects of the conspiracy;

(2) the defendant knew or had reason to know that other conspirators were involved with those with whom the defendant directly conspired; and

(3) the defendant had reason to believe that whatever benefits the defendant might get from the conspiracy were probably dependent upon the success of the entire venture.

It is not a defense that a person's participation in a conspiracy was minor or for a short period of time.

COURT'S INSTRUCTION NO. _____

INTENT TO DEFRAUD – DEFINED

An intent to defraud is an intent to deceive or cheat.

COURT'S INSTRUCTION NO. ____

“ON OR ABOUT” EXPLAINED

The indictment charges that offenses were committed “on or about” a certain date.

Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in the indictment, it is not necessary for the government to prove that the offense was committed precisely on the date charged.

COURT'S INSTRUCTION NO. ____

AIDING AND ABETTING

A defendant may be found guilty of wire fraud, witness tampering and blackmail, even if the defendant personally did not commit the act or acts constituting the crime but aided and abetted in its commission. To prove a defendant guilty of aiding and abetting, the government must prove beyond a reasonable doubt:

First, the crime specified was committed by someone;

Second, the defendant knowingly and intentionally aided, counseled, commanded, induced or procured that person to commit each element of the crime specified; and

Third, the defendant acted before the crime was completed. It is not enough that the defendant merely associated with the person committing the crime, or unknowingly or unintentionally did things that were helpful to that person, or was present at the scene of the crime. The evidence must show beyond a reasonable doubt that the defendant acted with the knowledge and intention of helping that person commit wire fraud, witness tampering and blackmail.

The government is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

COURT'S INSTRUCTION NO. ____

SUBSTANCE OVER FORM

Where an individual exercises complete dominion and control over income and its sources, the tax law generally attributes the income to the individual rather than to a nominal owner. The Tax Code taxes legal entities such as trusts and corporations separately from their owners. But if the entities lack economic substance or serve as the alter ego of an individual taxpayer who uses them to evade taxes, the tax burden falls on the individual taxpayer. This is a basic principle of federal income-tax law. Tax consequences flow from the substance rather than the form of a transaction, and control over property, rather than documentary title marks the real owner for federal tax purposes.

For taxation purposes, dominion and control means actual command over the income and its means of production. For example, income from a property transaction is attributable to the person who controlled and implemented the transaction and who benefitted from it. Conducting the transaction in the name of a nominee does not prevent the income from being attributed to the real party in interest. Likewise, the real party in interest cannot escape the consequences of such income by anticipatory arrangements and contracts.

Therefore, a trust or corporation that lacks economic substance and has no purpose other than tax avoidance is not recognized for Federal tax purposes. Generally, the law will not recognize a trust for Federal tax purposes if the creator keeps substantially unfettered powers of disposition or beneficial enjoyment of trust property. Federal tax law will disregard such an entity for Federal tax purposes, even if it is valid under State law.

COURT'S INSTRUCTION NO. ____

STATUTORY LANGUAGE OF 18 U.S.C. § 1343

§ 1343. Wire Fraud

Title 18, United States Code Section 1343 provides, in part that:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be guilty of an offense against the United States].

COURT'S INSTRUCTION NO. __

WIRE FRAUD - ELEMENTS

The defendant is charged in Counts Twenty-Five through Thirty-Two of the indictment with wire fraud in violation of Section 1343 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly participated in, devised, or intended to devise a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises;

Second, the statements made or facts omitted as part of the scheme were material; that is, they had a natural tendency to influence, or were capable of influencing, a person to part with money or property;

Third, the defendant acted with the intent to defraud; that is, the intent to deceive or cheat; and

Fourth, the defendant used, or caused to be used, the wires to carry out or attempt to carry out an essential part of the scheme.

In determining whether a scheme to defraud exists, you may consider not only the defendant's words and statements, but also the circumstances in which they are used as a whole.

A wire is caused when one knows that the wires will be used in the ordinary course of

1 business or when one can reasonably foresee such use. It does not matter whether the material
2 wired was itself false or deceptive so long as the wire was used as a part of the scheme, nor does
3 it matter whether the scheme or plan was successful or that any money or property was obtained.

COURT'S INSTRUCTION NO. ____

SCHEME TO DEFRAUD – VICARIOUS LIABILITY

If you decide that the defendant was a member of a scheme to defraud and that the defendant had the intent to defraud, the defendant may be responsible for other co-schemers' actions during the course of and in furtherance of the scheme, even if the defendant did not know what they said or did.

For the defendant to be guilty of an offense committed by a co-schemer in furtherance of the scheme, the offense must be one that the defendant could reasonably foresee as a necessary and natural consequence of the scheme to defraud.

COURT'S INSTRUCTION NO. ____

STATUTORY LANGUAGE OF 18 U.S.C. 1512(b)(1) ****

§ 1512(b)(1). Tampering with a witness, victim, or an informant

Title 18, United States Code Section 1512(b)(1) provides, in part, that:

Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to – influence, delay, or prevent the testimony of any person in an official proceeding . . . shall be [guilty of an offense against the United States].

COURT'S INSTRUCTION NO. __

WITNESS TAMPERING – ELEMENTS

The defendant Eric Lighter is charged in Counts Thirty-Four through Thirty-Six of the Indictment with attempted witness tampering in violation of Section 1512(b)(1) of Title 18 of the United States Code. In order for the defendant Lighter to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, on or about the date specified in the Indictment, defendant Lighter attempted to corruptly persuade Dr. Irwin Gootnick;

Second, defendant Lighter acted knowingly and with the intent to cause Dr. Gootnick to conceal or withhold material facts in connection with testimony in an official proceeding, namely a federal criminal trial. The term "corruptly" means to act with a knowingly dishonest or consciously wrongful purpose. The term "persuade" refers to non-coercive conduct to convince another to engage in a course of behavior. To act with intent to cause another to "intentionally conceal or withhold material facts" means to act for the purpose of getting a person to withhold truthful information, or to omit information from statements thereby causing a portion of such statements to be misleading, and thereby create a false impression. It is not necessary for the government to prove that the person's testimony was, in fact, changed in any way.

COURT'S INSTRUCTION NO. ____

STATUTORY LANGUAGE OF 18 U.S.C. § 873

§ 873. Blackmail

Title 18, United States Code Section 873 provides, in part that:

Whoever, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demands or receives any money or other valuable thing, shall be [guilty of an offense against the United States].

COURT'S INSTRUCTION NO. __

BLACKMAIL – DEFINED

Blackmail is demanding or receiving any thing of value from a person as a condition of refraining from making an accusation against that person, or disclosing some secret calculated to operate to that person's prejudice.

COURT'S INSTRUCTION NO. __

BLACKMAIL – ELEMENTS

The defendant Eric Lighter is charged in Counts Thirty-Seven through Thirty-Nine of the indictment with blackmail in violation of Section 873 of Title 18 of the United States Code. In order for the defendant Lighter to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, on or about the date specified in the Indictment, defendant Lighter demanded money or other thing of value from Dr. Irwin Gootnick;

Second, this demand was under a threat of informing or as a consideration for not informing; against

Third, a violation of a law of the United States.

Ordinarily, the measure of value is not limited to commercial or monetary worth. There is a common, broader interpretation of value; information can be a thing of value. The conduct and expectations of both the defendant Lighter and the subject of the extortionate threat also can establish whether an intangible objective is a thing of value.

COURT'S INSTRUCTION NO. ____

DUTY TO DELIBERATE

When you begin your deliberations, elect one member of the jury as your foreperson who will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict on each of the counts, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

COURT'S INSTRUCTION NO. ____

VERDICT FORM

Verdict forms have been prepared for you. After you have reached unanimous agreement on a verdict, your presiding juror or foreperson should complete the verdict forms according to your deliberations, sign and date them, and advise the Courtroom Deputy Clerk, Ms. Garcia or Court Security Officer (CSO) that you are ready to return to the courtroom.

COURT'S INSTRUCTION NO. ____

COMMUNICATION WITH THE COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the Courtroom Deputy Clerk, Ms. Garcia or Court Security Officer (CSO), signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, on any question submitted to you, including the question of the guilt of the defendant, until after you have reached a unanimous verdict or have been discharged.

DATED: December 20, 2011

EDWARD J. DAVILA
United States District Judge